

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
On Behalf of all Other Persons
Similarly Situated,

Petitioner,

v.

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR THE PETITIONER

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INDEX

	<i>Page</i>
OPINION BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISIONS, STATUTES, ORDERS AND REGULATIONS INVOLVED	2
STATEMENT OF CASE	9
SUMMARY OF ARGUMENT	10
BACKGROUND AND INTRODUCTION	16
ARGUMENT	
I. PUBLIC LAW 280 DID NOT GRANT MINNESOTA THE AUTHORITY TO IM- POSE COMPREHENSIVE STATE TAXA- TION OVER RESERVATION INDIANS	22
A. The Background of Public Law 280 shows that it was designed to preserve the Indian's special relationship with the United States while improving the sys- tem for resolving reservation disputes	23
B. The conferral of civil jurisdiction was designed to bring to reservation Indians access to the state courts and access to the body of state law required to resolve civil conflicts	28
C. Congress protected the Indian immunity from state taxation by inserting in 28 U.S.C. §§1360(b) and (c) provisions preserving both the federal Indian trust relationship and powers of tribal self- government	36
(1) The legislative history suggests that Congress did not disturb the tax protections of Reservation Indians	37

	<i>Page</i>
(2) Minnesota's approach to Public Law 280 ignores Congress' purpose in adding sections (b) and (c)	41
II. THE CONFERRAL OF CIVIL JURISDICTION FOUND IN PUBLIC LAW 280 MUST BE CONSISTENT WITH THE CONGRESSIONAL ACTS CARRYING FORTH THE FEDERAL TRUST RELATIONSHIP	49
A. Indian Reorganization Act	51
B. Indian Financing Act	52
C. Indian Trading Statutes	53
D. The Buck Act	55
III. PUBLIC LAW 280 DOES NOT CONFER TAXING POWER EXPRESSLY—IT SHOULD NOT BE CONSTRUED TO HAVE DONE SO BY IMPLICATION	55
CONCLUSION	59

TABLE OF AUTHORITIES

Cases:

Carpenter v. Shaw, 280 U.S. 363 (1930)	57
Choate v. Trapp, 224 U.S. 665 (1912)	44, 57
Choctaw Nation v. United States, 318 U.S. 423 (1943)	57
DeCoteau v. District County Court, 420 U.S. 425 (1975)	58
Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)	19
The Kansas Indians, 72 U.S. (5 Wall.) 737 (1867)	44
Kennerly v. District Court of Montana, 400 U.S. 423 (1971)	22, 33
Leech Lake Band of Chippewa Indians v. Herbst, 334 F.Supp. 1001 (D. Minn. 1971)	16

	<i>Page</i>
Mattz v. Arnett, 412 U.S. 481 (1973)	22, 57, 58
McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973)	<i>passim</i>
Menominee Tribe v. United States, 391 U.S. 404 (1968)	35, 46, 50
Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973)	<i>passim</i>
Morton v. Mancari, 417 U.S. 535 (1974)	56, 58
Morton v. Ruiz, 415 U.S. 199 (1974)	58
Omaha Tribe v. Peters, 516 F.2d 133 (8th Cir. 1975)	21, 48
Santa Rosa Band of Indians v. Kings County, 74-1565 (9th Cir. decided Nov. 3, 1975)	<i>passim</i>
Seymour v. Superintendent, 368 U.S. 351 (1962)	58
Sigana v. Bailey, 282 Minn. 367, 164 N.W.2d 886 (1969)	32
Smith v. Temple, 82 S.D. 650, 152 N.W.2d 547 (1967)	32
Squire v. Capoeman, 351 U.S. 1 (1956)	44, 46, 56, 57, 58
State ex rel Adams v. Superior Court, 57 Wash.2d 181, 356 P.2d 985 (1960)	32
Tonasket v. State of Washington, 411 U.S. 451 (1973); on remand 84 Wash.2d 164, 525 P.2d 744 (1974)	54
United States v. Mazurie, 419 U.S. 544 (1975)	17, 52
United States v. McBratney, 104 U.S. 621 (1882)	29
United States v. Rickert, 188 U.S. 432 (1903)	44
United States v. Shoshone Tribe, 304 U.S. 111 (1938)	57
United States v. Winans, 198 U.S. 371 (1905)	57
Valdez v. Johnson, 68 N.M. 476, 362 P.2d 1004 (1961)	32

	<i>Page</i>
Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685 (1965)	33, 44, 46, 50-51, 53
Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959) <i>cert. denied</i> , 363 U.S. 829 (1960)	32
Williams v. Lee, 358 U.S. 217 (1959)	18, 44, 50
Worcester v. Georgia, 6 Pet. 515 (1832)	17
Your Food Stores, Inc. v. Village Espanola, 68 N.M. 327, 361 P.2d 950, <i>cert. denied</i> , 368 U.S. 915 (1961)	31
<i>Federal Statutes:</i>	
Treaty with the Chippewa, 1855 (10 Stat. 1165)	3
Indian Financing Act (April 12, 1974) (88 Stat. 77)	14, 52
4 U.S.C. §§104 et seq	<i>passim</i>
16 U.S.C. §16	34
16 U.S.C. §459	34
16 U.S.C. §460	34
18 U.S.C. §7	30
18 U.S.C. §13	30
18 U.S.C. §1152	4, 30
18 U.S.C. §1153	4, 30
18 U.S.C. §1162	3, 33, 37
25 U.S.C. §§261, 262	44, 51, 54
25 U.S.C. §§475, 476, 477	<i>passim</i>
25 U.S.C. §564	24
25 U.S.C. §564(j)	35
25 U.S.C. §564(q)	24, 35
25 U.S.C. §677	24
25 U.S.C. §677(p)	35
25 U.S.C. §677(v)	24, 35

	<i>Page</i>
25 U.S.C. §691	24
25 U.S.C. §699	35
25 U.S.C. §703	24, 35
25 U.S.C. §721	24
25 U.S.C. §726	24
25 U.S.C. §741	24
25 U.S.C. §749	35
25 U.S.C. §757	24, 35
25 U.S.C. §791	24
25 U.S.C. §798	35
25 U.S.C. §803	24, 35
25 U.S.C. §821	24
25 U.S.C. §823(a)	24
25 U.S.C. §841	24
25 U.S.C. §848	24
25 U.S.C. §891	24
25 U.S.C. §898	35
25 U.S.C. §899	24, 35
25 U.S.C. §971	24
25 U.S.C. §978	35
25 U.S.C. §980	24, 35
25 U.S.C. §§1321-1326	34, 57
25 U.S.C. §1322	26, 47
28 U.S.C. §1332	19, 20
28 U.S.C. §1360	<i>passim</i>
28 U.S.C. §1362	32-33
<i>State Statutes and Regulations:</i>	
18 California Administrative Code Regulation §17071(p)	48
California Revenue and Tax Code §17041	48

	<i>Page</i>
Minnesota Constitution, Article II, Section 5	47
Minnesota Statute §168.012(8)	9
Washington State Administrative Code 458-20-192	48
<i>Secondary Authorities:</i>	
The Extension of County Jurisdiction Over Indian Reservations in California: Public Law 280 and the Ninth Circuit, 25 Hastings L. J. 1451 (1974)	24
C. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 U.C.L.A. L. Rev. 535 (1975)	25

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OPINION BELOW

The Opinion of the Minnesota Supreme Court is reported at ____ Minn. ____, 228 N.W.2d 249 (1975). (App. p. 36).

JURISDICTION

The judgment of the Minnesota Supreme Court was entered on April 10, 1975 (App. 49). This was the final decision in this case by the Minnesota courts. A petition for writ of certiorari and motion to proceed *in forma pauperis* were filed July 7, 1975. The motion and petition were granted on November 3, 1975. The jurisdiction of this Court rests on 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

1. Whether Public Law 83-280 conferred on the State of Minnesota or its political subdivisions the power to impose a personal property tax on the mobile home of an enrolled Chippewa Indian located on land held in trust by the United States for the Chippewa Indians on the Leech Lake Indian Reservation in Minnesota.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDERS AND REGULATIONS INVOLVED

The relevant Constitutional provisions, statutes, orders and regulations are as follows:

A. Federal

1. The U.S. Const. Art. I, Sec. 8, Cl. 3:
"To regulate commerce with foreign nations and among the several states and with the Indian tribes;"

2. The Treaty of February 22, 1855, (10 Stat. 1165) between the United States of America and the Mississippi, Pillager and Winnibigoshish bands of Chippewa Indians. (App. p. 58).

3. Public Law 83-280, 67 Stat. 583, 18 U.S.C.A. §1162 and 28 U.S.C.A. §1360 provides:

§1162. State jurisdiction over offenses committed by or against Indians in Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended

California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reserva- tion
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty agreement or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

§1360. State Civil Jurisdiction in Actions to Which Indians Are Parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Terri- tory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reserva- tion
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

B. State

1. Article Twelve, Section 3 of the Restructured Constitution of Minnesota, adopted November 5, 1974 provides:

Local government; Legislation affecting

The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifica-

tions for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

2. Minn. Stat. § 272.01(1) provides:

Property subject to taxation

Subdivision 1. All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except Indian lands and such other property as is by law exempt from taxation.

3. Minn. Stat. § 275.07(2) provides:

Subdivision 2. County purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists for county purposes, such amount as is levied by the county board.

4. Minn. Stat. §§ 275.09(1) and (2) provide:

Subdivision 1. State purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists, for state purposes taxes in such amount as is levied by the legislature.

Subdivision 2. County purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists for county purposes, such amount as is levied by the county board.

5. Minn. Stat. § 168.012(9) provides:

Subdivision 9. Mobile homes shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the motor vehicle tax provisions of this chapter. Mobile homes shall be taxed

as personal property. The provisions of Minnesota Statutes 1957, Section 272.02 or any other act providing for tax exemption shall be inapplicable to mobile homes, except such mobile homes as are held by a licensed dealer and exempted as inventory. House trailers not used on the highway during any calendar year shall be taxed as mobile homes if occupied as human dwelling places.

6. Minn. Stat. §273.13(3) (Class 2a) provides:

Class 2a. All mobile homes, as defined in section 168.011 subdivision 8, shall constitute class 2a and shall be valued and assessed at 40 percent of the full and true value thereof. The valuation of class 2a property shall be subject to review as are other property values. The county treasurer shall mail to the taxpayer a statement of the tax due, determined by applying the rate of levy of the preceding year, not later than August 1 in the year of assessment. All unpaid taxes on mobile homes shall be deemed delinquent on September 1 in the year of assessment, and thereupon a penalty of eight percent shall attach and be charged upon all such taxes. Failure to timely pay the tax hereunder shall be treated in all respects as a default in payment of the personal property tax and shall be subject to all procedures and penalties applicable hereto.

7. Minn. Stat. §168.011(8) provides:

Subdivision 8. Mobile home and house trailer. (a) "Mobile home" means any trailer or semi-trailer which is designed, constructed, and equipped for use as a human dwelling place, living abode, or living quarters except house trailers.

STATEMENT OF THE CASE

The facts in this case have been stipulated to and are not in dispute. Russell Bryan is an enrolled member of the Minnesota Chippewa Tribe. Russell Bryan lives with his wife and family in a mobile home which is located on property held by the United States of America in trust for the Chippewa Tribe of Minnesota on the Leech Lake Indian Reservation. Land so held by the United States government is commonly known as tribal trust land.

During October, 1971, Russell Bryan had his mobile home placed on his assigned tribal trust property at Squaw Lake, Minnesota. This mobile home is connected to sewer, water and electricity. In June, 1972, he received notice from the Itasca County Auditor that, pursuant to Minn. Stat. 168.012(8), as amended by laws 1961, Ch. 340, he had been assessed a tax liability for two months of 1971, amounting to \$29.85 for his mobile home. On June 20, 1972, Bryan was notified by the Itasca County Treasurer that a tax of \$118.10 had been assessed on his trailer for 1972.

On September 11, 1972, an action was commenced by Russell Bryan and all others similarly situated against Itasca County and the State of Minnesota seeking a declaratory judgment declaring the levying and collection of such taxes were not authorized by Congress and therefore contrary to federal law.

The case was heard by Judge James F. Murphy on March 15, 1973. On July 27, 1973, the Court ordered the State of Minnesota dismissed from the lawsuit. On December 8, 1973, the Court entered its Judgment and Decree awarding a judgment against the plaintiff in the

amount of \$147.95. The Minnesota Supreme Court affirmed the entry of judgment in an opinion issued on March 28, 1975 and judgment was entered by that court on April 10, 1975. See Appendix pp. 36 and 49.

On July 7, 1975 petitioner filed a petition for a writ of certiorari and motion to proceed *in forma pauperis* with the United States Supreme Court. On November 3, 1975 the Court granted the motion to proceed *in forma pauperis* and the petition for a writ of certiorari.

SUMMARY OF ARGUMENT

A. Plaintiff, Russell Bryan is an enrolled member of the Leech Lake Indian Reservation, one of the bands of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe was organized and recognized as an Indian tribe by the United States pursuant to the Indian Reorganization Act, 25 U.S.C. §§476, 477. This Court has clearly recognized that Indian tribes, such as the Minnesota Chippewa Tribe are "unique aggregations possessing attributes of sovereignty over their members and their territory." And although sovereignty is not the sole determining factor to be applied in interpreting applicable treaties and federal statutes the concept of sovereignty has been recognized by this Court as providing a "backdrop against which" such enactments must be construed. This Court is now requested to apply this underlying principle as a guide to ultimately conclude that Public Law 280 does not confer upon the State of Minnesota the power to impose a personal property tax upon plaintiff's mobile home which is situated upon Chippewa tribal trust property.

B. Public Law 280 clearly did not confer upon the State of Minnesota the power to impose a comprehensive system of taxation over reservation Indians. This Court has repeatedly held that Congress must explicitly convey taxing authority to a state in order to effectively deprive Indians of their historic tax immunities. No such explicit language can be found in Public Law 280. Rather, a careful examination of the language and legislative intent behind Public Law 280 reveals that the conferral of civil jurisdiction authorized the State of Minnesota only to use its courts and existing body of "civil laws" to resolve private disputes between individuals on Indian reservations.

1. An examination of the background of Public Law 280 reveals that it was designed to preserve the special federal-Indian relationship while at the same time resolving civil disputes between individuals on Indian reservations. As the federal district courts are empowered with subject matter jurisdiction to resolve civil disputes involving amounts in controversy over \$10,000 between citizens of different states, Public Law 280 empowers the courts of Minnesota with subject matter jurisdiction to resolve "civil causes of action" involving Indians arising on Indian reservations. The limited scope of the civil jurisdiction conferred can be most clearly perceived by comparing Public Law 280 with the contemporaneous termination acts enacted by the same 83rd Congress which unlike Public Law 280 made use of explicit language to confer specific taxing authority in each individual enactment separate from and in addition to provisions conferring general civil jurisdiction. Further, the language used by Congress in 28 U.S.C. §§1360(b) and (c) strongly supports the

proposition that the established policy of preserving tribal governmental authority and the essential characteristics of the federal trust relationship was to be continued while conferring such limited civil jurisdiction.

2. The conferral of civil jurisdiction upon the states was designed to provide a benefit to reservation Indians by making available a body of existing state civil laws previously unavailable for the resolution of civil conflicts between Indians on reservations. While Congress was initially concerned with resolving the serious problem of the lack of an adequate criminal justice system on certain Indian reservations in drafting Public Law 280 a similar concern soon evolved regarding the increasing number of civil disputes arising out of private relationships which were also being inadequately resolved. It made sense, therefore, to at the same time assist the reservation Indians in providing a means to resolve civil causes of action, particularly where a ready-made body of state law could be made immediately available.

In providing a means of resolving private civil disputes Congress intended "civil laws . . . of general application" to mean those laws which have to do with "private" rights and responsibilities. Congress did not intend, however, to confer to the states the uniquely sovereign power to raise revenue which cannot be included within the normal meaning of "private" laws.

This Court has in past decisions specifically construed the provisions of Public Law 280 conferring civil jurisdiction on the states as meaning jurisdiction to deal with "civil causes of action." And in other decisions this Court has adopted a strict "tax jurisdiction" standard which prohibits the inferral of state taxing

authority not specifically authorized. Such inferring of special taxing powers from general conferral language is even more difficult to justify when Public Law 280 is read *in pari materia* with the contemporaneous termination legislation as this Court has instructed be done.

3. Rather than destroying reservation Indian tax immunity, as the Minnesota Supreme Court surprisingly and ironically concludes 28 U.S.C. §1360(b) does, both 28 U.S.C. §§1360(b) and (c) preserve reservation Indian tax immunity which is an attribute of the longstanding federal-Indian trust relationship.

The failure to specifically protect non-trust property tax immunities or provide protection specifically for every conceivable reservation Indian tax immunity in section (b) is easily explained by recognizing that the scope of such tax immunity was not yet fully explored at the time it was enacted and that all of the significant cases dealing with such immunities were litigated after the enactment of Public Law 280. If, as the Minnesota Supreme Court concluded, Congress had intended that all non-trust property tax immunities be destroyed by the enactment of section (b), those provisions would have evoked discussion within Congress and opposition from the Indian tribes. However, because Congress is enacting section (b) intended to assuage any concerns that might arise regarding the loss of Indian tax immunities, no such congressional discussion was evoked, nor were any fears expressed by the Indian tribes. Explicit recognition by Congress that for the most part Indians do not pay any taxes both during the hearings preceding the passage of Public Law 280 and in 1961 during the Senate Judiciary's hearings on the

constitutional rights of Indians gives further support to this view of Congress' continuing intent to maintain normal Indian tax immunity status.

Indeed, the provisions of section (b) itself make impermissible any attempt to regulate the use of tribal trust property. And it is submitted that the State of Minnesota by imposing the particular tax here challenged is in direct violation of this provision.

Finally, the Minnesota Supreme Court ignores the obvious intent of section (c) which made clear that reservation Indians would continue to exercise their sovereign powers of tribal self-government consistent with the purposes of the Indian Reorganization Act and the ongoing Congressional policies of self-determination.

C. The conferral of civil jurisdiction in Public Law 280 must be construed in a manner consistent with the body of congressional acts carrying forth the federal trust relationship. Some of the enactments which are relevant are described as follows.

The Indian Reorganization Act, 25 U.S.C. §§475, 476, 477, was designed to strengthen the Indian tribes powers of self-government. Crucial to this purpose was the need to empower the tribes with the authority to make decisions as to whether or not to tax its members. A dual system of taxation would frustrate this purpose.

The Indian Financing Act, 88 Stat. 77, §2, Public Law 93-262, likewise demands a construction of Public Law 280 consistent with its provisions and purposes. Accordingly, the channeling of federal finances through the Indian tribes and into the hands of state authorities would substantially frustrate federal efforts to help develop and utilize Indian resources.

Neither must this Court's interpretation of the Buck Act, 4 U.S.C. §§104 et seq., so as to recognize the limitations on state taxing authority be ignored.

As has been previously pointed out Public Law 280 must also be read *in pari materia* with the body of separate but contemporaneous termination congressional enactments.

Finally, Public Law 280 must be construed consistently with the Indian Trading Statutes, 25 U.S.C. §§261, 262. The Minnesota Supreme Court decision violates the intent and purpose of these statutes when it encourages taxes on all reservation Indians except those who have secured a federal traders license.

D. It has been emphasized that Public Law 280 does not confer taxing power expressly. Neither should its provisions be construed to have made such a conferral by implication. This Court in its decisions has consistently rejected the idea of repealing by implication statutes and treaties creating or preserving Indian rights. The rule of construction which has long been followed is that such enactments and treaties must be construed in favor of the Indian beneficiaries. What was intended, understood and consented to by the Indians has been and should continue to be controlling. A silent and backhanded extinguishment of Indian treaty rights and historically recognized tax immunities cannot reasonably have been intended by Congress or consented to by the Indians. Thus, the right of the Leech Lake Reservation Indians to the preservation of their tax immunity status ought to prevail and be applied to disallow the tax here challenged.

BACKGROUND AND INTRODUCTION

The Leech Lake Indian Reservation is located in North Central Minnesota and consists of 588,684 acres of land occupying portions of Itasca, Cass, Beltrami and Hubbard counties. The reservation was created by treaty in 1855 (10 Stat. 1165). In return for the cession of large tracts of land to the United States, the Leech Lake Indian Reservation was created "for the permanent homes of the Chippewa Indians" Art. III, 10 Stat. at 1166 (App. p. 59). Today most of the land on the reservation is owned by the federal government with the Chippewa National Forest occupying the largest portion of the land. The land, generally swampy and unsuitable for agriculture, includes many lakes including Cass, Leech, and Winnibigoshish. According to the 1970 Census, 2795 members of the Leech Lake Band live within or adjacent to the reservation, many of whom hunt and fish for their sustenance.¹

Russell Bryan is a member of the Leech Lake Band of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe was organized and recognized as an Indian tribe by the United States pursuant to the Indian Reorganization Act, the Act of June 18, 1934, 25 U.S.C. §§476, 477. The tribe operates under a Federal Charter of Incorporation, which was issued by the Secretary of the Interior in 1934 and ratified by the tribe in 1937.² The Minnesota Chippewa Tribe is a

¹See *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D. Minn. 1971).

²In addition to that Charter, the Tribe operates under a revised constitution and by-laws as amended and approved by the Secretary of the Interior on March 3, 1964.

self-governing Indian tribe. It is governed by representatives elected by each of its member reservations. It administers numerous Indian programs in the area of health, education and welfare which are federally and tribally funded. It also leases and controls the use of its trust land in cooperation with the Department of Interior.

Twenty-three years before the Leech Lake Indian Reservation was created, Justice Marshall wrote this Court's landmark decision in *Worcester v. Georgia*, 6 Pet. 515 (1832), and found Indian tribes to be "distinct political communities, having territorial boundaries, within which their authority is exclusive." 6 Pet. 515, 557. While the status of Indian tribes has undergone many changes since 1832, it is still clear that Indian tribes, like the Minnesota Chippewa Tribe "are unique aggregations possessing attributes of sovereignty over their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

As distinct political bodies with attributes of sovereignty, Indian tribes have long had problems in their relationship with the states in which they are located. In resolving questions concerning the extent of state jurisdiction over Indian tribes, this Court has indicated as recently as 1973 in *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973) that the sovereignty of Indian tribes, while no longer the sole determining factor, must still be considered "because it provides a backdrop against which the applicable treaties and federal statutes must be read." 411 U.S. at 172.

Generally, states have no power over reservation Indians other than that which Congress specifically

grants them. *Williams v. Lee*, 358 U.S. 217 (1959). In *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) this Court made it clear that only Congress can authorize state taxation over reservation Indians:

“* * * in the special area of the state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Commission*, *supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent.” 411 U.S. at 148.

Furthermore, in *McClanahan* this Court stated:

“... Similarly, narrower statutes authorizing States to assert tax jurisdiction over reservations in *special situations* are explicable only if Congress assumed that the States lacked the power to impose the taxes without special authorization. (Emphasis supplied.)

411 U.S. at 177. (Footnote omitted.)

In *McClanahan* this Court ruled that the State of Arizona had not been granted authority by the Congress to impose its income tax on income earned by Rosalind McClanahan, a Navajo Indian who resided on the Navajo Reservation. The only difference between the State of Arizona's attempt to tax Rosalind McClanahan's income and the State of Minnesota's efforts to tax Russell Bryan's personal property is that Congress conferred criminal and civil jurisdiction over Indian country on the State of Minnesota pursuant to Public Law 280.³ The task of this Court, therefore, is

³Act of August 15, 1953, Ch. 505, 67 Stat. 588-90, 18 U.S.C. §1162 and 28 U.S.C. §1360.

to determine whether the conferral of civil jurisdiction in Public Law 280 constitutes a congressional grant of state tax authority empowering Minnesota to tax Indians located on Public Law 280 reservations where it could not tax Indians located on a non-Public Law 280 reservation.⁴ In resolving this issue this Court will have to examine the Act and its legislative history to determine whether Public Law 280 authorizes new state taxing power over reservation Indians in a manner consistent with the decisions in *Mescalero* and *McClanahan*.

Public Law 280, 28 U.S.C. §1360, is a statute conferring subject matter jurisdiction on state courts over civil causes of action affecting Indians which arise in Indian country. In this respect it is like laws passed by Congress authorizing subject matter jurisdiction in federal courts. For example, 28 U.S.C. §1332 confers subject matter jurisdiction on the United States District Courts for all civil actions where the matter in controversy exceeds \$10,000 and the dispute is between citizens of different states. Congress not only conferred subject matter jurisdiction in diversity cases but also determined what laws the parties should look to once they brought their case into the federal courts:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. §1652.⁵ Similarly, in Public Law 280

⁴This Court expressly reserved this very question in *McClanahan*, 411 U.S. at 178, n. 18.

⁵This Court in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938) ruled that the law of the several states included both statutory law and decisional law, concluding that there was no federal common law to be applied in diversity actions.

Congress provided that once the parties brought their civil causes of action to the state courts, state laws of general application to private persons or private property (28 U.S.C. §1360(a)) and tribal ordinances not inconsistent with these state laws (28 U.S.C. §1360(c)) would apply.

Given this fact that Public Law 280 is a statute whose legislative history and language indicate that its sole purpose was to confer subject matter jurisdiction on state courts it is difficult to justify the Minnesota Supreme Court's ruling that the conferral of subject matter jurisdiction also contained authority for the states to assert their tax statutes against reservation Indians. Certainly no one has ever seriously argued that 28 U.S.C. §1332 granted the United States the authority not only to assert subject matter jurisdiction in diversity cases, but also its other sovereign powers, especially the power to tax state citizens.

A careful reading of the Minnesota decision indicates that the court found state taxing authority by relying on section (b) of the Act, rather than on section (a), the section which confers civil jurisdiction. Section (b) is the only portion of the Act which mentions taxation, indeed it and section (c) were inserted to reassure Indians that the grant of civil cause of action jurisdiction in section (a) was not intended to grant the states any sovereign power over the federal Indian relationship or the right of reservation Indians to organize tribal governments. It is a bitter irony to the Indians to have the Minnesota Supreme Court, twenty-two years after the passage of Public Law 280, look to the protective provisions of section (b) to sustain the assertion of state taxing power when it

could not sustain the tax under the conferral of civil jurisdiction language found in section (a).⁶

In Part I of this brief we will show that Public Law 280 was enacted for a limited purpose—namely to improve the apparatus for resolving criminal and civil disputes affecting reservation Indians. We will show that the background of the statute as well as the precise language utilized by Congress reveals a careful congressional plan to preserve intact for Public Law 280 reservations the basic structure of both the federal Indian trust relationship and the primary role of tribal self-government. Congress never intended the limited conferral of civil “cause of action” jurisdiction to terminate the Indians’ time-honored right to live on their reservations and to govern themselves free from state regulation and taxation.

In Part II of this brief we will demonstrate that Minnesota’s construction of Public Law 280 jeopardizes the Indians’ ability to carry on their tribal relations as self-governing reservation Indians. The state’s approach seriously undermines congressional enactments passed to strengthen reservation economic self-sufficiency and tribal self-government for all federally recognized Indian tribes. Since Public Law 280 did not leave Indians to be treated as if they were non-Indian citizens of the states, they are entitled to the same protections and benefits provided by federal statutes as are accorded reservation Indians generally.

Finally, in Part III we will show that time-honored rules of statutory construction mitigate against this

⁶The United States Court of Appeals for the Eighth Circuit in *Omaha Tribe v. Peters*, 516 F.2d 133, cert. filed July 30, 1975, adopted similar reasoning without discussion in finding state authority to impose income taxes on Public Law 280 reservation Indians in the State of Nebraska.

Court construing Public Law 280 as having impliedly extinguished the right of reservation Indians to be free of unauthorized state taxation.

I.

PUBLIC LAW 280 DID NOT GRANT MINNESOTA THE AUTHORITY TO IMPOSE COMPREHENSIVE STATE TAXATION OVER RESERVATION INDIANS

Congress and this Court have long recognized that a cornerstone of federal Indian policy has been to leave Indian tribes free from state jurisdiction and control. *McClanahan*, *supra* 411 U.S. at 168. When Congress does surrender any portion of federal control over Indians to the states, it has done so only after a detailed scrutiny of the desirability of expanding state jurisdiction. *Kennerly v. District Court of Montana*, 400 U.S. 423, 424, n. 1, 427 (1971). To be effective, the surrender of Indian jurisdiction to the states must be expressed explicitly in order to override judicial interpretations that favor the preservation of federal Indian immunities. *Mattz v. Arnett*, 412 U.S. 481, 504-505 (1973); *McClanahan*, *supra* at 176.

In this part, we will show that Congress had a limited purpose for enacting Public Law 280—namely to shift the responsibility for adjudicating criminal and civil disputes among reservation Indians from undermanned tribal governments to the states. Congress in Public Law 280 did not intend to dismantle the special relationship between the United States and the tribes or to extinguish the unique rights accorded by federal Indian

status. To the contrary, the legislative history as well as the language of the statute distinguish it from the contemporaneous termination acts passed by Congress to extinguish the federal status of selected Indian tribes in order to have terminated Indians treated like all other state citizens.

A. The Background of Public Law 280 Shows That it Was Designed to Preserve the Indian's Special Relationship With the United States While Improving the System for Resolving Reservation Disputes.

The limited scope of federal jurisdiction conveyed to the states in Public Law 280 can best be ascertained by comparing the statute with the contemporaneous termination acts enacted by the same 83rd Congress. In 1952, the House of Representatives, by resolution, ordered its Committee on Interior and Insular Affairs to investigate the Bureau of Indian Affairs and determine how that agency had evaluated the qualifications of Indian groups and tribes to manage their own affairs without further Federal supervision. H. R. Res. 698, 82d Cong., 2d Sess. (1952). The House Interior Committee responded, recommending a policy of assimilation of Indians into the Nation's social and economic life. H. Rep. No. 2503, 82d Cong., 2d Sess. 124 (1952). Congress expressed this termination policy most concretely in 1953 in House Concurrent Resolution 108, 67 Stat. B132 (1953):

[I]t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same

laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship. . . .⁷

This resolution was passed August 1, 1953, two weeks before Public Law 280 was enacted. Pursuant to this directive Congress enacted separate acts which expressly terminated the federal relationship with such tribes, among others as the Klamaths, the Utes, the Western Oregon tribes, the Paiutes, the Wyandottes, the Menominee and the Poncas. 25 U.S.C. §§564, 677, 691, 721, 741, 791, 821, 841, 891, 971 (1970).

In each of these statutes Congress provided:

Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians and . . . all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, *and the laws of the several states shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.* (Emphasis supplied.)

25 U.S.C. §§564q; 677(v); 703; 726; 757; 803; 823(a); 848; 899; 980.

In Public Law 280 Congress utilized a far different approach to deal with a far different problem.⁸ Instead

⁷H. Cong. Res. 108, 83rd Congress, 1st Sess. (1953). H. Rept. No. 841; S. Rept. No. 794.

⁸For a helpful discussion of the background of Public Law 280 as well as the problems raised by the Act, see Note, *The Extension of County Jurisdiction Over Indian Reservations in*

of providing that all laws of the States shall apply to the tribe and its members in the same manner as they apply to other citizens, Congress provided that each of the states shall have jurisdiction over civil causes of action to which Indians are parties and that those civil laws of the state that are of general application to private persons on private property shall have the same force and effect within Indian country as they have elsewhere. As we shall show Congress selected the latter phrasing to grant to the states only the power to use their courts and their substantive laws to resolve civil disputes arising on the reservation. In contrast, in the termination acts, Congress intended to accomplish precisely what the acts state, namely to have all state laws apply to the terminated Indians in the same manner as all state laws apply to non-Indian citizens.

In an important recent decision of the Court of Appeals for the Ninth Circuit, *Santa Rosa Band of Indians v. Kings County*, Civ. No. 74-1565 (9th Cir., decided Nov. 3, 1975) the court confirmed that Public Law 280 was designed to accomplish only a limited transfer of authority.

"* * * Congress, recognizing that most Indian tribes living on restricted lands in 1953 were economically or educationally unprepared for termination, undertook a more gradual process; Public Law 280 is only a part of that process. The statute shifted jurisdiction over Indian Country from the Federal government to the states in some

California: Public Law 280 and the Ninth Circuit, 25 Hastings L. J. 1451 (1974); C. Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. Rev. 535 (1975).

respects, but in others prolonged existing Federal supervision and Indian immunity from state jurisdiction, awaiting the decision by Congress, on a case-by-case basis, that termination of a particular tribe, with consequent imposition of all aspects of state jurisdiction, was appropriate."⁹

Slip Opinion, pp. 11, 12

Moreover, whereas a separate termination act was enacted for each tribe, Public Law 280 was designed to be available for all tribes wherever located. The Act thus not only affects Indian tribes who have in the past been made subject to its provisions but also all other states and tribes who may in the future elect, pursuant to the authority contained in 25 U.S.C. §1322 (1970), to submit their members' disputes to state courts in order to facilitate resolution of reservation conflicts.

Furthermore, whereas the termination acts were designed to extinguish federal supervision as well as the federal Indian relationship, and to have terminated Indians treated as if they were non-Indian citizens of the states, Public Law 280 was designed to deal with only a narrow aspect of the federal Indian relationship by transferring to the states the responsibility for resolving criminal and civil conflicts among reservation Indians where to do so would benefit the tribes or their members. Thus Congress was careful to preserve primary tribal governmental authority over reservation Indians:

⁹Santa Rosa, *supra*, represents the first careful analysis of the jurisdictional aspects of Public Law 280 by a federal court in the twenty-two years since the passage of the Act. We believe that this important Ninth Circuit case should be given careful consideration by the Court. We have lodged with the Clerk of the Court copies of the Santa Rosa opinion.

Any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws.

The following tribes, each of which has a tribal law and order organization functioning in a reasonably satisfactory manner, have advised Bureau officials of their objections to State jurisdiction, and their reservation areas have therefore been excepted in the transfer legislation: Red Lake Band of Chippewa Indians of Minnesota, Warm Springs Tribe of Oregon, and the Menominee Tribe of Wisconsin.¹⁰

Not only did Congress preserve tribal governmental authority, but the entire federal Indian relationship was held intact, because Public Law 280 was designed to transfer *only* limited criminal and civil conflict resolution jurisdiction to the States:

As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

¹⁰S. Rep. No. 699, 83rd Cong., 1st Sess. 5, 6 (1953).

Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.¹¹

Furthermore, an examination of the language utilized in Public Law 280 will confirm that Congress preserved the essential characteristics of the federal trust relationship as well as important attributes of tribal self-government when conveying to the states the authority to bring their criminal justice system and their courts to the aid of reservation Indians.

B. The Conferral of Civil Jurisdiction was Designed to Bring to Reservation Indians Access to the State Courts and Access to the Body of State Law Required to Resolve Civil Conflicts.

Public Law 280 is entitled "An Act [t]o confer jurisdiction . . . (on certain states) with respect to criminal offenses *and civil causes of action* committed or arising on Indian reservations within such States . . ." (Emphasis supplied). As to civil jurisdiction, the Act provides that a named state shall have "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . Indian coun-

¹¹S. Rep. No. 699, 83rd Cong., 1st Sess. 6.

try . . . to the same extent that such State . . . has jurisdiction over other civil causes of action, and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . ."

On its face the law is designed to give state courts subject matter jurisdiction to hear civil suits regarding causes of action that arise on reservations and to declare that laws of general application to private persons or private property shall apply in such suits. The legislative history suggests that in Public Law 280 Congress was primarily concerned with improving the criminal justice systems on the reservations. Civil jurisdiction was extended as an afterthought, presumably on the theory that once state courts and state law were made available to settle criminal disputes on the reservation they should likewise be made available to settle civil disputes arising out of private relationships.¹²

The Senate Report on the bill indicates the primary concern of Congress at the time was lawlessness on the reservation. S. Rept. No. 699, 83rd Cong., 1st Sess. 5 (1953). The criminal justice system was in a state of chaos. If a non-Indian committed a crime against another non-Indian or a crime without an apparent victim, such as drunk driving, only state authorities could prosecute him under state law. *See United States v. McBratney*, 104 U.S. 621, 624 (1882). But if either the offender or victim was Indian, the United States

¹²This view of the civil aspects of Public Law 280 has recently been adopted by the Ninth Circuit in *Santa Rosa*, *supra*. Slip opinion p. 8.

had exclusive jurisdiction to prosecute applying state law in many instances in federal court either under the "Major Crimes Act," 18 U.S.C. §1153 or the Assimilated Crimes Acts, 18 U.S.C. §1152, 18 U.S.C. §7 and 18 U.S.C. §13 (1970). Otherwise, tribal courts had exclusive jurisdiction since federal law enforcement was typically neither well financed nor vigorous. See the Statement of Representative D'Ewart in *Hearings on H.R. 459, H.R. 3235 and H.R. 3624 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs on State Legal Jurisdiction in Indian Country*, 82nd Cong., 2d Sess. Ser. 11, at 14 (1952) (hereinafter cited as the 1952 Hearings).

The result, described by House Indian Affairs Subcommittee member Weslery D'Ewart, of Montana, was "[T]he complete breakdown of law and order on many of the Indian reservations..." See 1952 Hearings, *supra* at 16.

Further indication that Congress was primarily concerned with the problems of improving the criminal justice system on the reservations is the fact that several predecessor bills offered the status criminal jurisdiction only. H.R. 459, H.R. 3235, H.R. 3624, 82nd Cong., 2d Sess. (1952). Moreover, as noted above, Public Law 280 itself exempted several reservations completely from state jurisdiction solely because they had legal systems and organizations functioning in a reasonably satisfactory manner. Senate Report No. 699, *supra* at 6. It is against this background emphasizing the need to improve the resolution of criminal disputes, that the civil portion of Public Law 280 must be read. Once state courts were granted jurisdiction over criminal matters, it made sense to extend that jurisdiction to cover private civil disputes also arising on the

reservation.

Thus, Congress utilized the phrase "civil laws . . . of general application to private persons or private property" not to authorize states to impose their vast powers of revenue raising, as urged by the states, but rather to clarify what laws would apply once the state civil processes were invoked. The phrase "civil laws" was inserted after the conferral of civil jurisdiction to make it clear that Indians and non-Indians could rely on state "civil laws . . . of general application to private persons or private property" when they invoked the jurisdiction of state courts.

Congress' concern for clarifying what might be called the "choice of law" question is demonstrated by the inclusion in Public Law 280 of paragraph (c) which not only recognized the continuing right of reservation Indians to govern themselves, but also provided that the parties could look to tribal laws not inconsistent with state civil laws to resolve their private conflicts in the state court proceedings. 28 U.S.C. §1360(c).

Tribal courts could not provide a forum for resolving the increasing number of civil disputes arising among Indians and non-Indians residing on or doing business on the reservations. On some reservations an Indian involved in an automobile accident or seeking a divorce or desiring to enforce a contract had no forum from which to obtain a resolution of his problems. The tribal court systems were simply inadequate. Moreover, the state courts had very limited jurisdiction.¹³ So Congress

¹³For example, state courts have been found without jurisdiction to enforce sales taxes on reservation lands (*Your Food Stores, Inc. v. Village Espanola*, 68 N.M. 327, 261 P.2d 950 (1961), *cert. denied*, 368 U.S. 915 (1961)), to hear tort actions arising on the reservation against reservation Indians

in Public Law 280 allowed Indians to go to state courts and provided them with a ready-made body of state law to look to in resolving their private civil disputes. Congress intended "civil laws . . . of general application" to mean those laws which have to do with private rights and status. Therefore, "civil laws . . . of general application to private persons or private property" would include the laws of contract, tort, marriage, divorce, insanity, descent and similar matters, but would not include laws declaring or implementing the states' sovereign powers, such as the unique power to raise revenue. The latter are not within the normal meaning of "private" laws.

A comparison of the Public Law 280 language with that used in the termination acts again reveals the limited nature of Congress' grant in the former statute. Thus, while Congress made *all* state laws applicable to both tribes and their members in the termination acts, in Public Law 280 it authorized state jurisdiction only over those civil causes of action affecting private persons or private property on Indian reservations. Tribes were conspicuously left out of the conferral of jurisdiction in section (a) although included in sections (b) and (c). This is not surprising since it would have been wholly inappropriate to have tribes resolve their disputes in state courts. Indeed, in 1966, thirteen years after Public Law 280, Congress enacted 28 U.S.C.

(Valdez v. Johnson, 68 N.M. 476, 362 P.2d 1004 (1961); Sigana v. Bailey, 282 Minn. 367, 164 N.W.2d 886 (1969); Smith v. Temple, 82 S.D. 650, 152 N.W.2d 547 (1967)), to hear divorce actions between reservation Indians (Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959), *cert. denied*, 363 U.S. 829 (1960)), and to hear dependency petitions against reservation Indian parents (State ex rel. Adams v. Superior Court, 57 Wash.2d 181, 356 P.2d 985 (1960)).

§1362 which provided special federal court jurisdiction for tribal controversies. However, if Congress intended Public Law 280 to confer comprehensive taxing authority, as is urged by the state there is no logical reason why they would have spared the tribal organizations but not tribal members, particularly where many business activities undertaken on the reservation are sponsored by the tribes.

This reading of Public Law 280—that Congress inserted the phrase "civil laws" to clarify the role of state and tribal laws in private civil disputes which occurred once subject matter jurisdiction passed to the state—is supported by this Court's construction of Public Law 280 in *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971). There the Court referred to Public Law 280 as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country" and to certain 1968 amendments as "a new regulatory scheme for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country." 400 U.S. at 428. It is also in line with the construction given Public Law 280 in *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685, 687, n.3 (1965), where the Court stated:

Certain state laws have been permitted to apply to activities on Indian reservations, where those laws are *specifically* authorized by acts of Congress, or where they clearly do not interfere with federal policies concerning the reservations . . . 18 U.S.C. §1162 (1958 ed.) and 28 U.S.C. §1360 (1958 ed.) (respectively granting certain states criminal and civil jurisdiction over offenses and *causes of action* involving Indians within specified Indian reservations). (Emphasis supplied.)

Significantly, Congress itself has also characterized Public Law 280 as only conferring the power to resolve private civil controversies. Thus in the 1968 amendment to Public Law 280 which required the states to obtain Indian consent to any new state jurisdiction, Congress stated:

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or *civil causes of action*, or with respect to both, shall be applicable to Indian country only where the enrolled Indians within the affected area of Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. (Emphasis supplied.)¹⁴

Because the words of the Act are directed toward resolving civil controversies occurring among reservation Indians and nowhere mentions the state's taxing authority, a power to tax must necessarily be implied from the statute's grant of general civil jurisdiction. Inferring taxing authority over Indians in this manner, however, does violence to the strict "tax jurisdiction" standard referred to in *McClanahan* and *Mescalero*, and is also inconsistent with the pattern of congressional acts which have provided the states with new taxing powers.¹⁵

¹⁴Public Law 90-284, §406, 82 Stat. 80, 25 U.S.C. §1326 (1970).

¹⁵In a number of statutes creating national recreational areas out of lands previously under mixed federal and state jurisdiction, Congress granted separately a general authority for the states to assert civil and criminal jurisdiction and a special authority for the states to impose state taxes. See 16 U.S.C. §16n-6, 16 U.S.C. §§459(i)(6), 460(b)(8), 460(z)(12). Similarly, in the Buck Act, 4 U.S.C. §§104-110, 61 Stat. 641, Congress expressly granted the states the power to impose gasoline taxes on Indian reservations by providing the states with a special taxing authority, and not simply with a grant of general civil jurisdiction.

Furthermore, inferring special taxing powers from the general conferral language is particularly difficult to justify in this situation because as we have shown the very same Congress which enacted Public Law 280 also passed a series of statutes terminating the Indian status and reservations of such tribes as the Klamath, Ute, Western Oregon, Paiute, Wyandotte, Menominee, and Ponca. In these acts providing for termination of the tribes and distribution of tribal property, Congress provided both that "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens" (25 U.S.C. §§564q, 677v, 703, 757, 803, 899, 980), and that "such property and any income derived therefrom by the individual . . . shall be subject to the same taxes, State and Federal, as in the case of non-Indians. . . ." (25 U.S.C. §§564j, 677p, 699, 749, 798, 898, 978.) This Court in *Menominee Tribe v. United States*, 391 U.S. 404 (1968) has instructed that Public Law 280 and the coincident termination legislation cited above must be read *in pari materia*. In *Menominee* this Court put Public Law 280 side-by-side with the Menominee Termination Act and found that section (b) in Public Law 280 preserved tribal hunting and fishing treaty rights. In this case when Public Law 280 is read side-by-side with the termination acts, which by their very terms extinguished all aspects of federal Indian status, subjected the terminated Indians to the general laws of the states in the same manner as non-Indians, and expressly exposed the distributed property and income of the terminated Indians to state taxation, it becomes apparent that the grant of civil jurisdiction in Public Law 280 dealt solely with resolving private civil disputes, and had nothing to do with authorizing new state taxing power.

C. Congress Protected the Indian Immunity from State Taxation by Inserting in 28 U.S.C. § § 1360(b) and (c) Provisions Preserving Both the Federal Indian Trust Relationship and Powers of Tribal Self-Government.

We have shown that the 83rd Congress selected two different legislative approaches—a termination of all aspects of the federal Indian relationship and a limited conferral of criminal and civil jurisdiction to solve the separate problems confronting those tribes which desired to be relieved of their federal wardship status and those tribes which merely sought state assistance in improving the mechanisms of justice on their reservations. Congress carefully selected broad all-inclusive language to terminate tribes, and narrow, limited language to assist tribes seeking to improve the resolution of their members criminal and civil disputes.

It is not surprising then that the Minnesota Supreme Court was unable to sustain Minnesota's property tax by relying on the conferral of civil jurisdiction language found in section (a); 28 U.S.C. § 1360(a). But what is surprising, and indeed very disturbing, is that the Minnesota Court relied on section (b); 28 U.S.C. § 1360(b), to sustain the state property tax when there is every reason to believe that section (b) was inserted for the very purpose of assuaging Indian fears that Public Law 280 would extinguish unique federal rights accorded reservation Indian status.¹⁶

¹⁶Congress preserved basic fundamentals of the federal Indian relationship in section (b) and preserved the authority of reservation Indians to exercise the powers of self-government in section (c); 28 U.S.C. § 1360(c). That Public Law 280 was designed to achieve a distribution of jurisdiction among the

Congress included in section (b) an enumeration of those rights which form the basis for the federal Indian trust relationship.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.¹⁷

(1) The legislative history suggests that Congress did not disturb the tax protections of Reservation Indians

The Minnesota Supreme Court reasoned that since section (b) provides that states cannot tax trust property, they can tax everything else. The legislative history, however, suggests just the opposite. That is, because some tribes feared that Public Law 280 "would

tribes, the states and the federal government and not a wholesale elimination of the federal Indian relationship is exhaustively discussed in *Santa Rosa Band of Indians v. Kings County*, supra, slip opinion, pp. 9-12.

¹⁷28 U.S.C. § 1360(b); 18 U.S.C. § 1162(b).

result in the loss of various rights,"¹⁸ section (b) was included to reassure them that there would be no change in those rights as a result of Public Law 280. An exchange between Congressman D'Ewart of Montana and Mr. Sellery, Chief Counsel for the Bureau of Indian Affairs, during the hearings on Public Law 280 lends support for this theory. Congressman D'Ewart asked Mr. Sellery whether the bill protected Indian treaty rights and tribal estates. Mr. Sellery reassured him by quoting from the exception clause.

A second colloquy involving Mr. Sellery of the Bureau of Indian Affairs provides further evidence that Congress did not intend section (b) to grant unlimited revenue authority to the states by carving out for protection only taxes associated with trust property. Thus, in response to a question from Congressman Young of Nevada raised during the hearings before the House Subcommittee on Indian Affairs as to whether Public Law 280 would subsidize the states through federal payment or increased state taxing authority, Mr. Sellery stated:

"Mr. Sellery. . . . Generally, the Department's views are that if we started on the process of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and it is a problem which the states should deal with and accept without Federal financial assistance; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the

¹⁸House Report No. 848, 83rd Congress, 1st Sess. (July 16, 1953).

financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.

Mr. Young. That would not quite be true, though; would it? Because *for the most part he does not pay any taxes.*

Mr. Sellery. *No. There is that difference.*

Mr. Young. A rather sizable difference is not paying for the courts or paying for the increased expenses for judicial proceedings.

Mr. Sellery. The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.¹⁹

¹⁹The reference to sales tax at this point indicates, in our view, the degree of uncertainty that surrounded the question of non-trust property taxation in 1953. Under the Buck Act, 4 U.S.C. §109, Indians were not subjected to state sales and income taxation permitted on federal enclaves by sections 105 and 106 of that Act. It is further unclear from the above exchange whether sales taxes for on or off reservation transactions are being discussed. Moreover, it was not until *McClanahan*, *supra* and *Mescalero*, *supra*, were decided that this Court clearly enunciated the on and off reservation differences with respect to state taxation. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973). Even those state courts which passed on the question before this Court did so after the passage of Public Law 280. See cases cited at footnote 2, *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 165 (1973). We believe that whatever the state of the law was in 1953 with respect to state taxation of reservation Indians, the legislative history compels the conclusion that Congress did not attempt to change or alter it through passage of Public Law 280. See *ante*. pp. 27-28 for a fuller discussion of the case law developments after 1953.

Mr. Young. But no income tax or corporation tax or profits tax. You understand a large portion of the land is held in trust and therefore is not subject to tax.

Mr. Sellery. That is correct.

Mr. Young. So far as my state is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

Mr. Sellery. I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States." (Subcommittee Hearings on H.R. 1063, P. 8, 18, p. 10, 15, Emphasis supplied.) App. 55-56.²⁰

²⁰Also instructive on this question is an exchange that took place in 1961, eight years after the passage of Public Law 280, between Senator Ervin and Senator Case of South Dakota during hearings concerning Public Law 280 on the Constitutional Rights of the American Indian before Senator Ervin's Subcommittee on Constitutional Rights of the Senate Judiciary Committee:

SENATOR ERVIN: Is that true even if a State under the recent act of Congress assumed first jurisdiction over a reservation?

SENATOR CASE: I think that would be true. *The assumption of jurisdiction (under Public Law 280) would not repeal or change the tax laws.*

SENATOR ERVIN: The result is such as assumption of full jurisdiction by a State would impose upon the counties in which the reservation is located additional burdens, not only from the standpoint of enforcement of the law; but from the standpoint of finances.

SENATOR CASE: That is true. That is the reason that counties have hesitated to accept the jurisdiction which was

These excerpts from the legislative history support the conclusion that Congress did not intend to confer taxing authority on the states when it authorized states to decide civil causes of action involving Indians. At the very least, the legislative history supports the view that Congress did not intend to disturb Indian tax immunities, whatever their status at that time. The one conclusion the legislative does *not* support is that Congress intended to change reservation Indian tax immunities by authorizing the states to apply the full panoply of their tax laws upon assumption of civil jurisdiction.

(2) *Minnesota's approach to Public Law 280 ignores Congress' purpose in adding sections (b) and (c)*

Contrary to the legislative history described above, and without reference to it, the Minnesota Supreme offered them in the law which Congress passed a few years ago. . . .

* * *

SENATOR ERVIN: That is what it is in my State. We have a State income tax also, and a State sales tax. But most of the burdens of local government do essentially rest on property tax. *When the State assumes full jurisdiction over the reservation under the recent act of Congress (Public Law 280), it gets no compensation for taxes, but it acquires additional burdens from which it has to use other tax sources which are already burdened, is that true?*

SENATOR CASE: *That is true.* (Emphasis supplied.)

See Hearings on Constitutional Rights of the American Indian Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, Pursuant to Senate Resolution 53, 87th Cong., 1st Sess., pt. 1, 136-137 (1961).

Court reads section (b) as giving Minnesota the power to impose all of its taxes on reservation Indians except those on trust property. If Congress had intended to preserve the immunity of reservation Indians from personal property taxes, income taxes, sales taxes and the like, the Minnesota Supreme Court reasoned, it would have included them in the exception clause. This reasoning assumes two things, however, which just were not true.

First, it assumes that the section (b) was inserted by Congress as a comprehensive enumeration of all those federal Indian rights which would survive the termination carried out by section (a) of Public Law 280; 28 U.S.C. §1360(a). But as we have shown Congress intended section (a) not as an open-ended grant of sovereign authority to the states, but only as a provision designed to deal with resolving private civil conflicts. Thus Congress included the phrase "civil laws of general application to private persons or private property" to provide a known body of law to be applied by the forum upon its assumption of jurisdiction. Moreover, and this is crucial to understanding the distribution of jurisdiction which took place in Public Law 280, Congress inserted section (c), in addition to inserting section (b), to make it clear that not only would the Federal Indian trust relationship survive, but also that reservation Indians would continue to exercise powers of tribal self-government. Thus, Congress made it explicit that the tribes would retain the right to govern reservation Indians. Sections (a), (b), and (c) were thus each designed to achieve a separate and complementary legislative goal.

In section (b) Congress not only protected Indian trust property from alienation, encumbrance or taxa-

tion, it also assured the Indians that their property would continue to be protected from any state regulation affecting the use of the property which would be inconsistent with *any Federal treaty, agreement, statute, or any regulation made pursuant thereto*. We submit that Minnesota's personal property tax constitutes an impermissible attempt under section (b) to regulate the use of the Chippewa's tribal trust lands. The regulation is inconsistent with both the Chippewa's treaty with the United States and federal statutes generally applicable to Indians. In *McClanahan, supra*, this Court resisted state taxation of an individual Indian's income by finding the taxation inconsistent with the protections provided Indian property and Indian reservations found in the Navajo treaty with the United States, 15 Stat. 667, and the Arizona Enabling Act, 36 Stat. 557. Similarly, in *Mescalero, supra*, the Court found a state tax on the use of tribal trust property inconsistent with the Indian Reorganization Act, 25 U.S.C. §§475, 476, 477, authorizing tribes to acquire land, and to have such land exempt from state taxation. In Part II of this Brief we will describe in greater detail the federal protections granted the Minnesota Chippewa Tribe, which were specifically preserved in section (b) and in section (c) and which we believe prohibit the assertion of the Minnesota taxes at issue in this case.

Second, the state's view that section (b) leaves Public Law 280 Indians only the remnant of trust property tax immunity assumes, we believe incorrectly, that Congress evaluated all of the Indian tax immunities and selected out for preservation only those tied to trust property. To the contrary, the failure of Congress to

specify non-trust property tax immunities can be explained by the fact that at the time of the enactment of Public Law 280 in 1953, neither the states nor Congress nor indeed this Court had begun to explore fully the scope of the Indian tax immunity not tied to trust property.²¹ An examination of the significant Indian cases affecting income, sales, and tribal or business activities on reservations not related to Indian trust property reveals that all were litigated and decided after the enactment of Public Law 280. *Squire v. Capoeman*, 351 U.S. 1 (1956) (income derived from allotment is immune from federal income taxes); *Williams v. Lee*, 358 U.S. 217 (1959) (the application of state laws may not interfere with tribal sovereignty); *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965) (states may not tax Indian businesses because Congress has occupied the field through enactment of the federal trading statutes, 25 U.S.C. §261, et seq.); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973) (states may not tax Indian income earned on an Indian reservation absent specific congressional authorization); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) (Indian tax exemptions exist for off-reservation activities only if secured by a federal statute).

Given the scope of Indian tax immunities existing at the time of the enactment of Public Law 280, section

²¹Indeed, the important Supreme Court cases dealing with Indian tax immunities decided prior to 1953 involved only trust property. *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1867); *United States v. Rickert*, 188 U.S. 432 (1903); and *Choate v. Trapp*, 224 U.S. 665 (1912).

(b) preserving the status of trust property from alienation and encumbrance as well as taxation can be viewed in at least two diverse ways: (a) as a congressional expression confirming the special protection for trust property secured by preexisting opinions of this Court, and by longstanding congressional legislation, i.e., the General Allotment Act, 24 Stat. 388, or (b) as a congressional determination to carve out and preserve from the conferral of general taxing power of section (a) only those tax immunities accorded by reservation Indian status which were related to trust property. However, the first alternative is the only one consonant with this Court's interpretation of Public Law 280 as being directed toward resolving civil causes of action arising on reservations for it recognizes that section (a) conferred only a state forum and a ready-made body of state law and did not grant comprehensive state taxing power. The first alternative simply confirms that in section (b) Congress was intent on alleviating Indian fears and emphasized that the Indians would continue to possess the rights, privileges, immunities, and benefits historically accorded reservation Indians (apart from the right of tribal self-government preserved in section (c)) in furtherance of the federal Indian relationship.

This reading of section (b) is supported by the circumstances surrounding the enactment of the law. During passage of Public Law 280 there was no discussion of state power to tax on the floor of the House and Senate.²² Further, there was little opposi-

²²See 99 Cong. Rec. 9962 (July 27, 1953); 99 Cong. Rec. 10782, 10928 (Aug. 1, 1953).

tion raised by the Indian tribes during consideration of the bill concerning the grant of general civil jurisdiction. This can only be explained by the fact that neither Congress nor the Indians felt that Public Law 280 was in any way changing the historic tax immunity of reservation Indians.

On the other hand, the second alternative, adopted by the Minnesota Supreme Court, requires that section (a) be construed to be an open-ended, but unstated, grant of state taxing authority. The second alternative also requires imputing to Congress without any direct evidence a full awareness of the complex issues surrounding the scope of the Indian tax immunity years before this Court rendered its judgments in *Warren Trading Post*, *Mescalero Apache Tribe* and *McClanahan*. Finally, reading section (b) as a congressional mandate to treat Public Law 280 Indians differently from all other federally recognized Indians by limiting their tax immunity to trust property, requires imputing to Congress the intent and the action of silently terminating an important right reserved by reservation Indians without expressly informing the Indians. We believe such a reading is inconsistent with how this Court has interpreted federal acts enacted to benefit Indians. *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *Squire v. Capoeman*, 351 U.S. 1 (1956).

The recent decision of the Ninth Circuit in *Santa Rosa*, *supra*, casts further doubt on whether Congress intended Public Law 280 to cover taxes such as the county personal property taxes involved in this case. In *Santa Rosa* the court held that "civil laws of general application within the state" do not include county codes or ordinances. The personal property tax asserted

by Itasca County is assessed and collected for county and local purposes under the authority contained in Article II, Section 5 of the Minnesota Constitution and Minn. Stat. §275.09. As a result the property tax may not constitute a civil law of general application within the State of Minnesota and the tax would thus be invalid even if this Court were to conclude that Public Law 280 authorizes general state taxation of reservation Indians. But this result would produce extremely varied consequences nationwide. In those states where the state government imposes and collects property taxes for state and local purposes, Public Law 280 Indians would be exposed to such property taxation. Such incongruous results across the nation seem inconsistent with the clear congressional intent to make Public Law 280 civil and criminal subject matter jurisdiction available to all states and tribes that wished to make the state's judicial system available to reservation Indians. 28 U.S.C. §1360, 25 U.S.C. §1322. Whether taxing authority is included in such assumption of jurisdiction would then depend totally on the specific taxing system in operation in the state at any given time after the assumption of jurisdiction. Thus a state could gain or lose taxing authority over reservation Indians depending on whether it altered its general revenue raising structure to emphasize or limit local assessment and collection of taxes. Such a result hardly seems consistent with the intent of Public Law 280 to provide a uniform statute that could be adopted by those states and tribes desiring to make the state's judicial system available to reservation Indians.

Even when states have decided to impose taxes pursuant to Public Law 280 they have done so by

widely varying schemes. For example, California does not tax income directly derived from utilization of lands held in trust, Cal. Rev. and Tax Code §17041; 18 Cal. Admin. Code Reg. Sec. 17071(p), nor does it impose its sales tax on businesses located on trust land. In contrast Washington State taxes personal property, sales, and businesses on Indian reservations. Revenue Ruling 192, Washington Administrative Code 458-20-192 (Adopted Dec. 16, 1974). See generally the discussion of taxation of reservation Indians in Public Law 280 states found in the amicus brief of Bad River Band of Lake Superior Chippewa Indians of Wisconsin et. al, filed in support of petition for certiorari in *Omaha Tribe v. Peters*, Docket No. 75-169.

Minnesota's view of Public Law 280 results in chaotic and inconsistent treatment of reservation Indians nationally. Minnesota's view also assumes that Congress, being aware of the economic plight of the Indians, many of whom were living in grinding poverty, intended to impost upon them immediately the full panoply of state taxes. Indeed, the states themselves took more than twenty years to realize that they may have gained taxing authority by virtue of Public Law 280.

Moreover, it also seems incongruous that Congress would exempt trust land from taxes and at the same time allow states to tax Indian homes such as Russell Bryan's which are located on that land merely because the state classifies such property as personal. The state's approach ascribes to Congress an intent to treat the historic wards of the United States in a casual and callous fashion, and attributes to Congress the action of protecting both the federal Indian relationship and the

inherent powers of tribal self-government with one hand while silently authorizing regulation and taxation by other governmental bodies with the other hand.

Surely, if Public Law 280 was intended by Congress to permit states to begin imposing a myriad of taxes on reservation Indians, the result of which would be to affect their very ability to live on the land set aside for their permanent homes and carry on their cultural heritage, it would have been a matter of sufficient importance to at the very least evoke discussion within Congress and some opposition from the Indian tribes concerning the wisdom of such legislation. Public Law 280 was not opposed by the affected tribes for one reason—it was designed to solve pressing problems concerning law enforcement and the lack of an adequate forum to resolve private civil disputes and nothing more.

II.

THE CONFERRAL OF CIVIL JURISDICTION FOUND IN PUBLIC LAW 280 MUST BE CONSISTENT WITH THE CONGRESSIONAL ACTS CARRYING FORTH THE FEDERAL TRUST RELATIONSHIP

The scope of civil jurisdiction granted the states in Public Law 280 must be construed in light of congressional acts passed in furtherance of the unique federal responsibility to Indian tribes. Congress preserved these Federal Statutes for those tribes affected by Public Law 280 when in section (b) it assured the Indians that they would continue to use their

reservations as provided for in their treaties and in statutes enacted for the benefit of Indians generally. In *Santa Rosa Band of Indians v. Kings County*, *supra*, the Ninth Circuit construed Public Law 280 not only in light of the termination acts, but also in comparison with the Indian Reorganization Act, 25 U.S.C. § 476, which was designed to strengthen the powers of tribal self-government:

From that perspective, we conclude that Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations. Prior to passage of Public Law 280, Congress had encouraged, under § 476 of the Indian Reorganization Act, the formation and exercise of tribal self-government on reservation trust lands. A construction of Public Law 280 conferring jurisdiction to local county and municipal governments would significantly undermine, if not destroy, such tribal self-government.

Slip Opinion, p. 11.

The Ninth Circuit's reliance on the termination acts and on the Indian Reorganization Act in its construction of Public Law 280 is consistent with this Court's construction of Indian legislation. Thus, as we have underscored (p. 22) this Court has read the termination acts *in pari materia* with Public Law 280 *Menominee Tribe v. United States*, 391 U.S. 404 (1968). Moreover this Court has looked to the Indian Reorganization Act, 25 U.S.C. §§ 476, 477 for guidance in protecting the right of tribal self-government from state interference, *Williams v. Lee*, 358 U.S. 217 (1959), and in protecting an off reservation Indian ski enterprise from state use taxes, *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). Again in *Warren Trading Post v. Arizona Tax*

Commission, 380 U.S. 685 (1965) this Court concluded that Congress preempted the states from taxing Indian traders when it enacted federal trading statutes. 25 U.S.C. §§ 261, 262. Furthermore, this Court relied on the exemption from state income taxation placed in the Buck Act, 4 U.S.C. §§ 104 et seq., when it ruled that Arizona could not impose its income tax against reservation Indian income, *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 176, 177 (1973).

An examination of these Indian statutes reveals that each continues in effect on Public Law 280 reservations. Moreover, as we have shown, in section (b) of Public Law 280, Congress assured the Indians that they would continue to enjoy the full use of their reservations under federal protections secured by treaty and federal statute. Foremost among the federal statutes which control the use of trust property are the ones analyzed in the above described decisions of this Court. The protections embodied in these Acts cannot be construed to have been impliedly eliminated by the conferral of civil jurisdiction.

A. Indian Reorganization Act.

The decision below paves the way for state intrusions in tribal sovereignty through unlimited taxation and in so doing frustrates the federal policies strengthening tribal self-government found in the Indian Reorganization Act, 25 U.S.C. §§ 475, 476, 477. Under tribal constitutions and charters authorized by the Indian Reorganization Act and approved by the Secretary of the Interior, tribes as independent political entities have

the power to levy their own taxes upon on-reservation incomes and businesses. To the extent that states are empowered to tax these same enterprises, the tribal taxing power is destroyed *pro tanto*. A dual system of taxation is not a political reality, for it will discourage the location of new businesses upon Indian reservations. If tribes are ever to exercise their inherent powers of self-government, they must be free to control taxation within their boundaries, and to use tax revenues for their own governmental purposes. Unless Public Law 280 is construed to have withheld state power to tax reservation Indians and enterprises, the tribes will be reduced to little more than private social clubs, a result recently rejected by this Court in *United States v. Mazurie*, 419 U.S. 544 (1975).

B. Indian Financing Act

Furthermore, the decision below, in allowing comprehensive on-reservation taxation of Indians raises a new and formidable hurdle to the accomplishment of the goal so recently enunciated by Congress in the Indian Financing Act:

"to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility of the utilization and management of their own resources . . .,"²³

Widespread state taxation will undercut special federal efforts to assist reservation Indians because it now appears that an ever-growing percentage of funds

²³Act of April 12, 1974, 88 Stat. 77, §2. Public Law 93-262.

appropriated by Congress for Indian businesses will be sidetracked to state taxing authorities.

Nowhere in the Indian Financing Act, or indeed in any Indian legislation of general applicability has Congress created two classes of Indians; normal Indians and Public Law 280 Indians. Congress has never distinguished between Indians when either strengthening tribal powers of self-government or increasing the opportunities of tribal members to engage in economic self-determination. Indeed, in the last three fiscal years, Bureau of Indian Affairs and Indian Health Service expenditures on the six reservations of the Minnesota Chippewa Tribe subject to Public Law 280 were \$1,798,700 excluding education in 1973, \$1,996,200 excluding education in 1974 and \$3,231,100 including education in 1975.²⁴ This indicates a continuing federal commitment to maintaining reservation life. In light of the protections in section (b), there is no reason to believe, therefore, that Congress considers Public Law 280 Indians as ineligible for the full range of federal legislation designed to strengthen tribal self-government and Indian economic independence. As a result we find it improper to construe Public Law 280 as in effect putting Public Law 280 reservation Indians in the same position as other citizens of the states.

C. Indian Trading Statutes

In *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965) this Court precluded the assertion

²⁴These figures were received from Area Director George Goodwin, B.I.A., and are available at the Minnesota area office of the Bureau of Indian Affairs.

of Arizona state taxes on a reservation business by deciding that Congress had preempted the field of Indian trading, leaving no room for the states to tax, when it enacted the Indian Trading Statutes, 25 U.S.C. §§ 261, 262. Indian businesses on Public Law 280 reservations are still subject to the federal regulation provided for in 25 U.S.C. §§ 261 and 262. As a result Public Law 280 states presumably could not seek to intervene to tax a reservation business which was licensed under and regulated by the federal government. Indeed this very result was reached by the Washington Supreme Court in *Tonasket v. State of Washington*, vacated and remanded, 411 U.S. 451 (1973); on remand 84 Wash.2d 164, 525 P.2d 744 (1974) appeal dismissed 420 U.S. 915 (1975). On remand the Washington Supreme Court affirmed its earlier decision that Public Law 280 granted the State of Washington the power to tax reservation cigarette sales to non-Indians. In its holding, however, the court expressly stated that its decision neither dealt with taxes on trust property, personalty, inventory, gross receipts or income, nor disturbed this Court's holding in *Warren Trading Post v. Arizona Tax Commission*, supra, that the states cannot tax retail sales by federally licensed Indian traders to reservation Indians. 525 P.2d at 754.

Thus if this Court were to uphold Minnesota's approach to Public Law 280 it would have to find, in effect, that Congress intended to impose state taxes on all reservation Indians except those businesses which have secured a federal traders license. We do not believe Congress intended to piecemeal Indian jurisdiction in such an illogical manner.

D. The Buck Act.

Yet another congressional statute is swept aside by the approach of the Minnesota court. We refer to the Buck Act, 4 U.S.C. §§ 104 et seq. As construed by this Court the Buck Act exempted reservation Indians from an express conferral of income taxing authority to the states over federal enclaves. This Court observed that Congress would not have "jealously" protected the immunity of reservation Indians from state income taxes had it thought the states had residual power to impose such taxes in any event. *McClanahan v. Arizona State Tax Commission*, 411 U.S. at 176, 177. In spite of this the lower court in this case ruled, in effect, that in 1953, just six years after carefully preserving the exempt status of reservation Indians in the Buck Act, Congress swept all of this aside in Public Law 280, an act designed to improve the resolution of criminal and civil disputes. Minnesota would have this immunity "jealously" protected in 1947 but impliedly repealed in 1953.²⁵

III.

PUBLIC LAW 280 DOES NOT CONFER TAXING POWER EXPRESSLY—IT SHOULD NOT BE CONSTRUED TO HAVE DONE SO BY IMPLICATION

Repeals by implication such as required to sustain the state's view of Public Law 280 are not favored by

²⁵Although the Buck Act provisions conferring (4 U.S.C. §§ 105 and 106) and excepting (4 U.S.C. § 109) state tax authority was with respect to sales and income taxes, the same analysis is appropriate for personal property taxes on Indian reservations.

this Court where unique Indian rights are affected. See *Morton v. Mancari*, 417 U.S. 535 (1974); *Squire v. Capoeman*, 351 U.S. 1 (1956). In *Morton v. Mancari*, *supra*, this Court refused to find that federal Indian employment preferences had been impliedly repealed by the Equal Employment Opportunity Act of 1972.

... Appellees encounter head-on the "cardinal rule... that repeals by implication are not favored." (citations omitted). They and the District Court read the congressional silence as effectuating a repeal by implication. There is nothing in the legislative history, however, that indicates affirmatively any congressional intent to repeal the 1934 preference. Indeed, as explained above, there is ample independent evidence that the legislative intent was to the contrary.

This is a prototypical case where an adjudication of repeal by implication is not appropriate. The preference is a longstanding, important component of the Government's Indian program. The anti-discrimination provision, aimed at alleviating minority discrimination in employment, obviously is designed to deal with an entirely different and, indeed, opposite problem. Any perceived conflict is thus more apparent than real.

417 U.S. at 549-550.

We believe that *Squire* and *Mancari* are applicable to preserve the Indian tax immunity from repeal by implication. If Congress wanted to allow states to tax Indians' personal property or income it would have done so expressly. This Court should not allow the State to achieve that result by resorting to statutory inferences in a backhanded way. *Menominee Tribe v. United States*, 391 U.S. 404, 412 (1968). This is especially true here, because like *Mancari* the alleged

conflict is more apparent than real, for as we have suggested Congress designed Public Law 280 to achieve two related goals: first to improve the administration of criminal and civil justice on the reservations; and second, to preserve what was thought to be the existing federal Indian legal relationship.

Our interpretation of Public Law 280 is not only supported by the Act's legislative history and language and consistent with other Indian legislation it is compelled by this Court's rules of construction.

As a congressional act benefiting Indians, Public Law 280 must be construed in favor of the Indian beneficiaries for whom it was enacted. *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *United States v. Shoshone Tribe*, 304 U.S. 111, 117 (1938); *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943); *United States v. Winans*, 198 U.S. 371 (1905); *Squire v. Capoeman*, 351 U.S. 1, 6, 7 (1956); and *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973). When Congress has dealt with Indians, this Court has consistently construed congressional acts in light of the historical circumstances with paramount emphasis being placed on what was intended, understood and consented to by the Indians. *Mattz v. Arnett*, 412 U.S. 481 (1973); *Squire v. Capoeman*, *supra*, and *Carpenter v. Shaw*, 280 U.S. 363 (1930).²⁶

²⁶In determining whether Public Law 280 authorized the State of Minnesota to impose its personal property taxes on the Leech Lake Reservation from the point of view of whether the Indians intended, understood and *consented to* such taxing authority, it is particularly important to note that Public Law 280 as enacted in Minnesota did not require the consent of the affected Indian tribes. However, Public Law 280 was amended in 1968, 82 Stat. 78, 79, 80, 25 U.S.C. §1321-1326 to require the consent of the

Furthermore, this Court has reviewed on many occasions lower court decisions to assure that Indian reservation status and reservation Indian rights afforded by treaties and federal statutes are not extinguished without a clear congressional determination to do so. *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); and *DeCoteau v. District County Court*, 420 U.S. 425 (1975) (Indian reservation status cannot be impliedly terminated by unilateral act of Congress); *Squire v. Capoeman*, 351 U.S. 1 (1956) (Indian allotment immunity is not extinguished by federal Internal Revenue Code); *Menominee Tribe v. United States*, 391 U.S. 404 (1968) (implied hunting and fishing treaty rights are not abrogated by federal termination acts); *Morton v. Ruiz*, 415 U.S. 199 (1974) (Indian welfare assistance cannot be arbitrarily cut off for off-reservation Indians); and *Morton v. Mancari*, 417 U.S. 535 (1974) (Indian employment preference is not eliminated by federal equal employment legislation). Each of these important Indian rights has been protected by this Court from backhanded extinguishment. Certainly the right of Indians to be free from state taxation while residing and working on their reservations in the absence of an express Act of Congress directing state taxation is of no less significance.

affected Indian tribe. In the absence of any indication that the Minnesota Indians intended or understood that Public Law 280 would result in exposing their personal property to state taxation, the rules of construction cited above strongly suggest that Public Law 280 not be construed as comprehending state taxation.

CONCLUSION

Petitioner urges this Court to reverse the decision of the Minnesota Supreme Court and declare that Russell Bryan and other members of the Minnesota Chippewa Tribe are entitled to live in their trailers without being exposed to state taxation.

Respectfully submitted,

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